

REMARKS

This is in response to the non-final Official Action currently outstanding with respect to the above-identified application.

Claims 1-27 were present in this application as originally filed. By the foregoing Amendment, Applicants have amended the presently pending claims so as to more clearly and distinctly claim the present invention without change to the substance of any of the claims. Applicants do not seek the cancellation, addition or withdrawal of any claims by this submission. Accordingly, Claims 1-27 as hereinabove amended will constitute the claims under active prosecution in this application upon the entry of the foregoing Amendment.

More specifically, it is noted that in the currently outstanding Official Action, the Examiner has:

1. Acknowledged Applicants' claim for foreign priority under 35 USC 119(a)-(d) or (f), and indicated that the required certified copies of the priority document have been received by the United States Patent and Trademark Office;
2. Failed to reconfirm that the drawings as filed in the above-identified application on 5 March 2001 are accepted as previously noted in the Notice of Allowability;
3. Provided Applicants with a copy of a Notice of References Cited (Form PTO-892);

4. Acknowledged Applicants' Information Disclosure Statement by providing Applicants with a copy of the Form PTO-1449 that accompanied that Statement duly signed, dated and initialed by the Examiner in confirmation of his consideration of the art listed therein;
5. Indicated that Claims 10-27 are allowed;
6. Objected to Claims 2 and 5 as being dependent upon a rejected base claim, but indicated that Claims 2 and 5 would be allowable if rewritten in independent form including all of the limitations of their respective base claims and any intervening claims; and
7. Rejected Claims 1, 3-4 and 6-9 under 35 USC 102(e) as being anticipated by the Nakajima et al reference (US Patent 6,760,299).

With respect to items 1 - 5 above, no further comment is deemed to be required in this communication.

With respect to item 6, Applicants respectfully decline the Examiner's offer to allow Claims 2 and 5 if rewritten in independent form including all of the limitations of their respective base claims and any intervening claims, without prejudice, at the present stage of this prosecution in view of the following discussion of the Examiner's substantive rejections.

With respect to item 7, Applicants are enclosing herewith verified English language translations of both of the priority documents upon which Applicants' claim for foreign priority is based in this application in order to perfect their previously stated claim for foreign priority in this case (see, Declaration and Power of Attorney).

Applicants respectfully submit that the perfection of their claim for foreign priority in this application discussed immediately above fully and completely overcomes the Examiner's outstanding rejections under 35 USC 102(e). More specifically, as discussed in section 2136.03 of the Manual of Patent Examining Procedure, in the circumstances present in this application, the Examiner is entitled to rely only upon the United States filing date of the Nakajima United States Patent 6,760,299 for purposes of using that patent as a reference under 35 USC 102(e) against the present application. The United States filing date of the Nakajima patent relied upon by the Examiner is 29 June 2000.

However, Applicants respectfully submit that they are entitled to rely upon their perfected claim for foreign priority in order to overcome the Examiner's rejection if the priority dates to which they are entitled are prior to the United States filing date of the patent upon which the Examiner relies. Applicants respectfully submit that such is the case in this application. In particular, the foreign priority applications from which the Applicants claim priority in this application are dated 6 March 2000 and 21 March 2000, respectively, well prior to the United States filing date of the Nakajima reference upon which the Examiner relies in support of his rejections under 35 USC 102(e).

Accordingly, Applicants respectfully submit that by virtue of their perfection of their foreign priority rights in this application by the filing of verified English language translations of both of the priority documents upon which Applicants' claim for foreign priority in this application are based, the Examiner's currently outstanding rejections of Claims 1, 3-4 and 6-9 of the present application are fully and completely overcome.

In the latter regard, Applicants respectfully call the Examiner's attention to the following quotation of Section 2136.03 of the Manual of Patent Examining Procedure in support of the foregoing assertions.

“2136.03 Critical Reference Date [R2]

I. FOREIGN PRIORITY DATE

*Reference's Foreign Priority Date Under 35 USC 119 (a)-(d) and (f)
Cannot Be Used as the 35 USC 102(e) Reference Date*

35 USC 102(e) is explicitly limited to certain references “filed in the United States before the invention thereof by the applicant” (Emphasis added) - *Note that the inventive entity for the reference relied upon by the Examiner is not the same inventive entity as the present Applicant* – Foreign application’s filing dates that are claimed (via 35 USC 119 (a)-(d), (f) or 365(a) in applications which have published as US or WIPO application publications or patented in the US, may not be used as 102(e) dates for prior art purposes. This includes international filing dates claimed as foreign priority dates under 35 USC 365(a). Therefore, the foreign priority date of the reference under 35 USC 119(a)-(d), (f), and 365(a) cannot be used to antedate the application filing date. In contrast, the applicant may be able to overcome the 35 USC 102(e) rejection by proving he or she is entitled to his or her own 35 USC 119 priority date which is earlier than the reference’s US filing date. *In re Hilmer*, 359 F.2d 859, 149 USPQ 480 (CCPA 1966) (*Hilmer I*) (Applicant filed an application with a right of priority to a German application. The Examiner rejected the claims over a US patent to Habicht based on its Swiss priority date. The US filing date of Habicht was later than the application’s German priority date. The court held that the reference’s Swiss priority date could not be relied on in a 35 USC 102(e) rejection. Because the US filing date of Habicht was later than the earliest effective filing date (German priority date) of the application, the rejection was reversed.) See MPEP Sec. 201.15 for information on procedures to be followed in considering applicant’s right of priority.”

Therefore, in view of the foregoing Amendment and Remarks, Applicants respectfully submit that the Examiner's outstanding rejections have been overcome by Applicants' perfection of their priority claim in these proceedings. In view of the foregoing, Applicants respectfully request reconsideration of this application and the allowance of Claims 1-27 in response to this communication.

Finally, Applicants believe that additional fees are not required in connection with the consideration of this response to the currently outstanding Official Action. However, if for any reason a fee is required, a fee paid is inadequate or credit is owed for any excess fee paid, you are hereby authorized and requested to charge and/or credit Deposit Account No. **04-1105**, as necessary, for the correct payment of all fees which may be due in connection with the filing and consideration of this communication.

Respectfully submitted,

Date: July 7, 2005

By: David A. Tucker
David A. Tucker
Reg. No. 27,840
Attorney for Applicant(s)

EDWARDS & ANGELL, LLP
P.O. Box 55874
101 Federal Street
Boston, MA 02205
(617) 523-3400
492991